APPENDIX

(Excerpts from the Court of Criminal Appeals' Decision)

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
November 27, 2001 Session

STATE OF TENNESSEE v. DARYL KEITH HOLTON

Direct Appeal from the Circuit Court for Bedford County
No. 14302 William Charles Lee, Judge

No. M2000-00766-CCA-R3-DD - Filed July 17, 2002

OPINION

[Deleted: Summary of Facts]

[Deleted: Sufficiency of the Evidence]

[Deleted: Constitutionality of Tenn. Code Ann. §39-11-501 (1997)]

Trial Conditions[1]

The appellant also argues that poor acoustics in the courtroom during his trial denied him the fair trial guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution. In support of his argument, the appellant cites numerous instances in the record wherein the trial participants expressed difficulty hearing the proceedings.

Preliminarily, we note our supreme court's prior observation that the Fifth and Fourteenth Amendments to the United States Constitution guarantee a criminal defendant's right to a fair trial whereas the Sixth Amendment largely defines the basic elements of a fair trial. State v. Carruthers, 35 S.W.3d 516, 559 (Tenn. 2000)(citing Strickland v. Washington, 466 U.S. 668, 684-685, 104 S. Ct. 2052, 2063 (1984)), cert. denied, 533 U.S. 953, 121 S. Ct. 2600 (2001). In any event, the appellant correctly observes that a fair trial entails a jury mentally and physically capable of hearing and deliberating upon the evidence adduced at trial, cf. Tenn. Code Ann. § 22-1-102 (1994); State v. Parton, 817 S.W.2d 28, 33 (Tenn. Crim. App. 1991), in addition to a defendant's receipt of the effective assistance of counsel. Moreover, "[o]ne of the most fundamental responsibilities of a trial court in a criminal case is to assure that a fair trial is conducted." State v. Franklin, 714 S.W.2d 252,

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[1] Appellant's issue III.

258 (Tenn. 1986); see also Parton, 817 S.W.2d at 35 (observing that, regardless of the actions of the litigants or lawyers, the trial judge has the responsibility to make sure that the appellant receives a proper jury trial and the effective assistance of counsel). To this end, the trial court has "broad discretion in controlling the course and conduct of the trial." State v. Caughron, 855 S.W.2d 526, 541 (Tenn. 1993); see also State v. King, 40 S.W.3d 442, 449 (Tenn. 2001); State v. Evans, 838 S.W.2d 185, 195 (Tenn. 1992).

The record reflects that all the trial participants, including the trial court, acknowledged the poor acoustics in the courtroom in which the appellant was tried. The record also reflects, however, that the trial court provided the following instruction to the jury at the trial's commencement:

> This, as you all know, is an extremely important matter to both the State of Tennessee and the defendant. It is extremely important that you be able to hear all of these proceedings.
>
> Consequently if during the course of the presentation of the evidence or the arguments or statements of counsel you are unable to hear any party, a witness, an attorney, or myself, please let me know. We will have that person adjust their volume or speech pattern in such a manner that you may hear all of the evidence in this case. Do not hesitate to raise your hand at any time you are unable to hear the proceedings. We will make whatever adjustments as are necessary to see that you can hear.

Moreover, the record reflects that, during the course of the appellant's trial, jurors in fact informed the court if they were having any difficulty hearing a witness' testimony, and the trial court admonished the witness accordingly. Also, the court made "technical adjustments" to the courtroom arrangement in order to assist participants in hearing the proceedings, including providing "special hearing devices" to jurors during the replay of audio tape recordings. Indeed, in denying the appellant's motion for new trial, the court reaffirmed that, "shortly after the beginning of the trial . . . I took control of the - - at least the amplification system and replaced the microphones and rearranged the courtroom which I think helped tremendously." Counsel for both the State and the appellant joined in the trial court's efforts to eliminate the impact of poor acoustics by periodically cautioning witnesses to speak loudly and occasionally asking that witnesses repeat testimony.

Absent from the record is any indication by the trial court or counsel that the poor acoustics in the courtroom rendered the performance of their respective duties impracticable. Also absent from the record is any indication that the jury missed any portion of the proceedings due to the poor acoustics. Notably, defense counsel at no time requested a mistrial on the basis of the poor acoustics. "At most, the record supports a conclusion that, at times, it was difficult to hear in the courtroom." People v. Duff, 419 N.W.2d 600, 602 (Mich. Ct. App. 1987). The appellant nevertheless suggests the application of the principle announced by the United States Supreme Court in Estes v. Texas, 381 U.S. 532, 542-543, 85 S. Ct. 1628, 1632-1633 (1965), that, although "in most cases involving claims

of due process deprivations we require a showing of identifiable prejudice to the accused[,] . . . at times a procedure employed by the State involves such a probability that prejudice will result that it is deemed inherently lacking in due process." Cf. also Holbrook v. Flynn, 475 U.S. 560, 568-572, 106 S. Ct. 1340, 1345-1348 (1986). We simply disagree that the courtroom arrangement in this case presented a case of inherent prejudice, much less actual prejudice. Cf. People v. Vaughn, 340 N.W.2d 310, 312 (Mich. Ct. App. 1983)("From the record it appears that the acoustic conditions in the courtroom were so intolerable and so interfered with the orderly conduct of the trial that defendant was denied a fair trial."). In short, the trial court properly exercised its discretion by taking the necessary steps to ensure that all participants could hear the proceedings. Accordingly, this issue is without merit.

The Constitutionality of the Death Penalty[2]

The appellant additionally asserts that the death penalty is violative of the fundamental right to life guaranteed by the United States and Tennessee Constitutions. Relying essentially upon substantive due process and equal protection principles, the appellant's argument is two-fold: (1) the death penalty never promotes a compelling state interest; and (2) even assuming the contrary, the State's pre-trial offer to the appellant of a sentence of life imprisonment in exchange for a guilty plea conclusively demonstrated the availability in his case of less intrusive means to promote the State's interest. As noted by the State, both this court and our supreme court have previously rejected similar arguments. See State v. Mann, 959 S.W.2d 503, 517 & 536 (Tenn. 1997); State v. Bush, 942 S.W.2d 489, 507 & 523 (Tenn. 1997); Brimmer v. State, 29 S.W.3d 497, 531 (Tenn. Crim. App. 1998); Byron Lewis Black v. State, No. 01C01-9709-CR-00422, 1999 Tenn. Crim. App. LEXIS 324, at **73-74 (Nashville, April 8, 1999). The appellant is not, therefore, entitled to relief.

[**Deleted: Review Mandated by Tenn. Code Ann. § 39-13-206(c) (1997)**[3]]

III. Conclusion

In summary, following a careful and extensive review of the record and the parties' briefs and upon making the determinations required by Tenn. Code Ann. § 39-13-206(c)(1) (1997), we affirm both the appellant's convictions of first degree premeditated murder and his sentences of death.

NORMA McGEE OGLE, JUDGE

CONCUR:

DAVID H. WELLES, JUDGE

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[2] Appellant's issue II.

[3] Appellant's issues V and VI.

JERRY L. SMITH, JUDGE